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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL WILDLIFE FEDERATION, et al.,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE, et al.,

Defendants.

Case No.: 3:01-CV-00640-SI

**JOINT STIPULATION AND
[PROPOSED] ORDER TO
SETTLE PLAINTIFFS'
CLAIMS FOR ATTORNEYS'
FEES AND COSTS**

This Stipulated Agreement (“Agreement”) is made between Plaintiffs, National Wildlife Federation *et al.*, and Federal Defendants, the National Marine Fisheries Service *et al.* (collectively, “Parties”).

WHEREAS, on October 7, 2005, the Court issued a remand order directing the National Marine Fisheries Service (NMFS) to correct a number of legal deficiencies identified in the 2004 Biological Opinion (ECF 1087);

WHEREAS, Federal Defendants filed a notice indicating that NMFS issued a superseding 2008 Biological Opinion and completed the remand (ECF 1425);

WHEREAS, Plaintiffs filed a fourth and fifth supplemental complaint challenging the 2008 Biological Opinion (ECF 1447, 1492);

WHEREAS, the Court issued an order voluntarily remanding the 2008 Biological Opinion to NMFS on February 19, 2010 (ECF 1750);

WHEREAS, Federal Defendants notified the Court of NMFS’s completion of the remand and issuance of the 2010 Biological Opinion on May 20, 2010 (ECF 1762);

WHEREAS, Plaintiffs filed a sixth supplemental complaint challenging the 2010 Biological Opinion and records of decision (ECF 1783);

WHEREAS, the Court identified legal deficiencies with and remanded the 2008/2010 Biological Opinions to NMFS (ECF 1855);

WHEREAS, Federal Defendants filed a notice with the Court indicating that NMFS had completed the remand by issuing the 2014 Supplemental Biological Opinion (ECF 1914);

WHEREAS, Plaintiffs filed a seventh supplemental complaint that challenged the 2008/2014 Biological Opinions (ECF 1928);

WHEREAS, the Court identified legal deficiencies with and remanded the 2014 Supplemental Biological Opinion to NMFS (ECF 2065) and thereafter issued an order of remand (ECF 2089), an order granting in part motions for injunctive relief (ECF 2194, 2258), and an order granting in part Plaintiffs' motion to modify the remand schedule (ECF 2288);

WHEREAS, the U.S. Court of Appeals for the Ninth Circuit affirmed the Court's order granting injunctive relief, *NWF v. NMFS*, 886 F.3d 803 (9th Cir. 2018);

WHEREAS Plaintiffs filed claims for attorneys' fees and costs governing litigation on the 2008, 2010, and 2014 Biological Opinions (ECF 1770, ECF 1917, 2121), and the Court stayed each of these claims (ECF 1771, 1918, 2125);

WHEREAS, Plaintiffs have provided Federal Defendants with their contemporaneous time records and other information for their claims for attorneys' fees and costs, and counsel for the Parties have engaged in good faith, confidential settlement negotiations concerning Plaintiffs' claims for attorneys' fees and costs;

WHEREAS, the Parties have reached an agreement as to an appropriate settlement of Plaintiffs' claims for fees and costs and agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve Plaintiffs' claims for fees and costs; and

WHEREAS, the Parties enter the Agreement below without any admission of fact or law, or waiver of any claims or defenses, factual or legal, except as specified in the Agreement;

NOW THEREFORE, the Parties STIPULATE and move the Court to ORDER AS FOLLOWS:

1. Federal Defendants agree to settle Plaintiffs' entire claim for attorneys' fees, costs, and any other expenses incurred in the above-captioned litigation through December 31,

2019, including all fees and costs incurred for district court proceedings or while the case was on appeal to the Ninth Circuit Court of Appeals, for \$2,099,936.74.

2. Plaintiffs agree to accept payment of \$2,099,936.74 in the manner prescribed in Paragraph 3, below, in full satisfaction of any and all claims, demands, rights, causes of action pursuant to any statutory or common law theory, for attorneys' fees, costs, and expenses incurred by Plaintiffs in this litigation, including any claims for fees and costs while the case was on appeal, through and including December 31, 2019. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including December 31, 2019.

3. Federal Defendants agree to pay \$2,099,936.74 by check(s) or Electronic Funds Transfer(s) to an account to be specified by counsel for Plaintiffs for appropriate distribution to the Plaintiffs in this action. Plaintiffs will furnish counsel for Federal Defendants with the information necessary to effectuate this payment. Federal Defendants agree to submit all necessary paperwork to funding authorities at the Department of Interior, the Department of the Army, and the Department of Treasury within thirty (30) business days of receipt of the signed court order approving this Stipulation or within thirty (30) business days of receipt of information from Plaintiffs necessary to effectuate the payment, whichever is later. Plaintiffs shall provide confirmation of the receipt of the payment to undersigned counsel for Defendants within twenty one (21) days of receipt of the payment.

4. This Agreement does not apply to any claims for fees and costs that may arise from work after December 31, 2019 in this case. The Parties agree that, should Plaintiffs seek fees and costs for work in this case subsequent to December 31, 2019, this Agreement is without prejudice to Plaintiffs' right to seek such fees and costs and likewise is without prejudice to the

right of the Federal Defendants to oppose such a request. Federal Defendants reserve all arguments and defenses with respect to any such future fee application.

5. This Agreement shall apply to and be binding upon the Parties, their members, delegates, and assigns. The undersigned representatives of the Parties certify that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Parties to it. Plaintiffs and their attorneys agree to hold Federal Defendants harmless in any litigation, further suit, or claim arising between Plaintiffs and their attorneys from the payment of the agreed-upon settlement amount pursuant to this Agreement.

6. This Agreement is executed solely for the purpose of compromising and settling Plaintiffs' claims for attorneys' fees and costs in the above-captioned case. Nothing in this Agreement shall constitute, or be construed to constitute, a precedent in any other context. The Parties agree not to cite this Agreement in any other litigation except as necessary to enforce the terms of the Agreement. By this Agreement, Federal Defendants do not waive any right to contest fees or costs claimed by Plaintiffs or Plaintiffs' counsel in any future litigation, and Plaintiffs do not waive any right to claim such fees or costs in any future litigation.

7. Nothing in this Stipulation shall be interpreted as, or shall constitute, a commitment or requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

8. The Parties agree that this Stipulation was negotiated in good faith and it constitutes a settlement of claims that were vigorously asserted, contested, denied, defended and disputed by the parties. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to execute this Stipulation.

9. Plaintiffs acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other related authorities, the United States intends to offset against the attorneys' fee award Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

10. This Agreement represents the entirety of the Parties' commitments with regard to settlement of attorneys' fees and costs in the above-captioned case. The terms of this Agreement shall become effective upon approval by this Court of this Agreement.

11. In an electronic mail dated April 17, 2020, counsel for Plaintiffs, Todd True, authorized counsel for Federal Defendants, Michael R. Eitel, to sign this joint stipulation and enter it in the CM/ECF system.

Dated: April 20, 2020.

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/s/ Michael R. Eitel
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Attorneys for Federal Defendants

Dated April 20, 2020.

/s/ Todd D. True
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Attorneys for Plaintiffs

[PROPOSED] ORDER

The Court hereby approves and orders each and every term of this Stipulated Settlement Agreement. IT IS SO ORDERED.

Dated this _____ day of _____, 2020.

The Honorable Michael H. Simon
United States District Court Judge

CERTIFICATE OF SERVICE

I certify that on April 20, 2020, the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service on all Parties enrolled to receive such notice.

/s/ Michael R. Eitel